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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

REGINALD VON REED,  
Petitioner,

v.

RON RACKLEY,  
Respondent.

Case No. LA CV 15-3574 AG (JCG)

**ORDER ACCEPTING REPORT AND  
RECOMMENDATION OF UNITED  
STATES MAGISTRATE JUDGE AND  
DENYING CERTIFICATE OF  
APPEALABILITY AND EVIDENTIARY  
HEARING**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the Magistrate Judge's Report and Recommendation, Petitioner's Objections to the Report and Recommendation<sup>1</sup>, and the remaining record, and has made a *de novo* determination.

In his Objections, Petitioner raises one issue that warrants brief discussion here.

Namely, Petitioner contends that he suffered from psychosis during his AEDPA limitation period (January 23, 2013 – January 22, 2014) and thus is entitled to equitable tolling. In support, Petitioner cites several "progress notes" authored by

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<sup>1</sup> Petitioner's submission is titled "Opposition to Respondent's Motion to Dismiss." [See Dkt. No. 10 at 1.] However, no such motion has been filed in this action. Accordingly, in the interests of justice, the Court construes Petitioner's filing as Objections to the Magistrate Judge's Report and Recommendation.

1 prison mental health professionals that describe hallucinations and unusual beliefs  
2 reported by Petitioner. [Dkt. No. 10 at 3.] Petitioner also claims to have been on  
3 psychotropic medications during the limitation period. [*Id.* at 7.]

4 Generally, to evaluate whether a petitioner is entitled to equitable tolling due to  
5 a mental impairment, a district court must: “(1) find the petitioner has made a non-  
6 frivolous showing that he had a severe mental impairment during the filing period that  
7 would entitle him to an evidentiary hearing; (2) determine, after considering the  
8 record, whether the petitioner satisfied his burden that he was in fact mentally  
9 impaired; (3) determine whether the petitioner’s mental impairment made it impossible  
10 to timely file on his own; and (4) consider whether the circumstances demonstrate the  
11 petitioner was otherwise diligent in attempting to comply with the filing  
12 requirements.” *Bills v. Clark*, 628 F.3d 1092, 1100-01 (9th Cir. 2010).

13 For the reasons discussed below, the Court finds that Petitioner has failed to  
14 make the threshold “non-frivolous showing” that he suffered from a “severe mental  
15 impairment” during the limitation period. *See id.*

16 First, the probative value of Petitioner’s purported hallucinations, which are  
17 documented in a prison psychiatrist’s progress notes, is negated by the psychiatrist’s  
18 accompanying note that Petitioner experienced hallucinations only while using PCP.  
19 [Dkt. No. 10 at 5.] That is, Petitioner’s hallucinations were not a symptom of mental  
20 illness, but a fleeting impairment caused by illicit drug use.

21 Second, Petitioner’s progress notes consistently portray Petitioner as functioning  
22 well and responding well to treatment for depression and anxiety. A progress note  
23 dated March 29, 2013, states that Petitioner “reported functioning well,” was  
24 “cooperative, friendly, [and] attentive,” showed “no obsessions [or] delusions,” and  
25 was “[c]apable of prolonged attention without distraction.” [*Id.* at 9.] Subsequent  
26 notes describe Petitioner as demonstrating a “linear [thought process]” and  
27 concentration and attention within normal limits. [*Id.* at 6, 13, 14.] Although  
28 Petitioner maintained “odd beliefs regarding aliens,” he was aware that such beliefs

were “unusual,” and, in any event, these beliefs did “not [affect] his functioning.” [*Id.* at 6, 14.] In sum, nothing in Petitioner’s progress notes supports his claim that he suffered from psychosis, or any other “severe mental impairment,” during his limitation period. *See Bills*, 628 F.3d at 1100.

Third, Petitioner fails to explain how his “prescribed medication” rendered him “unable to comply with the requirements of AEDPA.” [Dkt. No. 10 at 3.] As of April 9, 2013, Petitioner took a single medication, Remeron, which is used to treat depression.<sup>2</sup> [*Id.* at 5]; *see* <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a697009.html>. In subsequent progress notes, prison psychiatrists consistently describe Petitioner as “[d]oing well on Remeron.” [Dkt. No. 10 at 6, 12, 14.] In short, the Court does not see – and Petitioner fails to explain – how his beneficial use of Remeron evidences a “severe mental impairment.” *See Bills*, 628 F.3d at 1100.

Thus, the Court finds that Petitioner has failed to make a “non-frivolous showing” that he suffered from a “severe mental impairment” during his limitation period. *See id.*

As such, Petitioner is not entitled to equitable tolling. *See id.*

Accordingly, IT IS ORDERED THAT:

1. The Report and Recommendation is approved and accepted;
2. Judgment is entered denying the Petition and dismissing this action with prejudice; and
3. The Clerk serve copies of this Order on the parties.

Additionally, for the reasons set forth in the Report and Recommendation and above, the Court finds that Petitioner has not shown that “jurists of reason would find it debatable whether”: (1) “the petition states a valid claim of the denial of a constitutional right”; *and* (2) “the district court was correct in its procedural ruling.”

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<sup>2</sup> Petitioner misidentifies Remeron as an antipsychotic. [*See* Dkt. No. 10 at 10.]

1 *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Thus, the Court declines to issue a  
2 certificate of appealability.

3 Finally, because Petitioner has failed to make a “non-frivolous showing” that he  
4 suffered from a “severe mental impairment” during his limitation period, the Court  
5 declines Petitioner’s request for an evidentiary hearing. *Cf. Bills*, 628 F.3d at 1100.  
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8 DATED: July 31, 2015

  
9 HON. ANDREW J. GUILFORD  
10 UNITED STATES DISTRICT JUDGE  
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